

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

AMERITEXT CORPORATION

DECISION OF THE HEARING OFFICER

Appearances: James H. Schulte Esq., Attorney for the Employer

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary

Employer: Ameritext Corporation, 45 Harvey Mill Road, Lee, NH 03861

Date of Hearing: March 19, 2014

Case No. 47160

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on December 12, 2013. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on January 23, 2014.

The claimant testified that he was hired as the Chief Engineering Officer for the employer as of April 2013. Prior to that, he had been an Independent Contractor working on projects for the employer. At a point in time the claimant entered negotiations with the employer to become a full time employee. They agreed upon a salary of \$80,000.00 per year. The claimant was not paid his salary for April and May so he is seeking \$13,333.33 in the Wage Claim.

In March of 2013 the claimant testified that he was told that the employer did not have the funds to continue or start wage payments. The claimant stated that he was aware of this but was told that there were potential sales that would put the company in the "black".

The claimant was presented with an employment contract but it was never signed by the employer. The claimant did say that he requested a letter of verification from the employer that would show he was a full time employee with a yearly salary of \$80,000.00. This request was made so that the claimant could obtain a lease in New York City after a move from Canada.

The claimant did say that because he was not getting his salary, he continued to submit invoices from his work as an Independent Contractor.

The employer testified that he did not have a signed employee contract with the claimant. He did have a contract with the claimant as an Independent Contractor. The company had a need to have signed contracts because there were investor's dollars in the company.

The employer also provided testimony that the claimant asked for a letter, saying that he was an employee and on salary, so that he could get a rental apartment in New York City. The employer did provide this letter to help out the claimant. The employer said that the claimant would have been hired on full time basis if the company ever had sales of their product. The sales never happened.

FINDINGS OF FACT

RSA 275:43 I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43-b: Payment of Salaried Employees. –I. A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

- (a) Any pay period in which such employee performs no work.
- (b) When an employee receives a disciplinary suspension without pay in accordance with the Fair Labor Standards Act, as amended, for any portion of a pay period, and written notification is given to the employee, at least one pay period in advance, in accordance with a written progressive disciplinary policy, plan or practice and the suspension is in full day increments.
- (c) If an unpaid leave of absence for a salaried employee is allowed pursuant to a written bona fide plan, policy or practice for absences, of a full day or more, of an employee caused by bereavement leave.
- (d) Any portion of a work day or pay period for leave taken under, and in accordance with, the federal Family and Medical Leave Act of 1993, as amended, if written notification from the employer stating the reason for such leave is given to the employee and placed in the employee's personnel file.
- (e) If the salaried employee voluntarily, without coercion or pressure, requests time off without pay for any portion of a pay period, after the employee has exhausted any leave time pursuant to a written bona fide leave plan, practice or policy and such leave time requested by the employee is granted by the employer.

II. Employers may prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of his own accord before the end of a pay period, or is terminated for cause by the employer.

III. The employer may offset any amounts received by a salaried employee for jury duty or witness fees or military pay for a particular pay period, against the salary due for that pay period pursuant to a written bona fide leave plan, practice or policy.

This part of the law spells out how a salaried employee is compensated under the law.

It is the finding of the Hearing Officer, based on the submissions and the testimony presented for the hearing that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing; he did not meet this burden. The claimant did not produce a signed contract for full time employment. All that was brought forward was a letter, requested by the claimant, in order to secure a residence. It was also pointed out that the claimant did submit invoices for work as an Independent Contractor after the date he said he was a full time employee.

The employer was credible in that the company was never a viable entity and the claimant was never hired as a full time employee. The employer did try to help out the claimant, in his move from Canada to New York City. The issued letter does not constitute a hiring agreement. The employer tried to pay all invoices from Independent Contractors. These debts however are not part of the Wage Claim. It also appears that the claimant was still working as an Independent Contractor, and submitting bills, after the date he said he was a full time employee.

The Wage Claim is invalid.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

/s/

Thomas F. Hardiman
Hearing Officer

Date of Decision: April 7, 2014

Original: Claimant
cc: Employer

TFH/cag